

FILED

IN THE UNITED STATES DISTRICT COURT

DEC 10 2007

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

FREDERICK LEE BAKER,

On Habeas Corpus.

) Case No:
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Cal. Supreme Ct S1564499

Monterey County

Superior Court No. HC-4990

CV 07

6289

CW

(PR)

PETITIONER'S DECLARATION(S)
1 through 4 IN SUPPORT OF
PETITION FOR WRIT OF HABEAS
CORPUS

Frederick L. Baker
Correctional Training Facility
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Petitioner in Pro Per

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT

In re	)	Case No.
)	
FRED L. BAKER,	)	DECLARATION BY PETITIONER OF
	)	COURT ABUSING ITS DISCRETION
	)	IN DENYING PETITIONER'S HABEAS
	)	PETITION IN VIOLATION OF THE
	)	RULES GOVERNING HABEAS CORPUS
	)	PROCEDURE, PENAL CODE SECTION(S)
On Habeas Corpus.	)	1480 AND 1484

I Fred L. Baker, declare:

1. That it is the function of the court to discover the truth of factual allegations set forth by a habeas petitioner, and to provide justice by fashioning a remedy where the petitioner has stated a prima facie case.

2. The most important factual allegation in Petitioner's habeas corpus petition were that Respondent lost the second tape that contained the critical information needed to complete the record for review.

3. That by the court failing to compel Respondent to respond to the material factual allegations set forth in the habeas petition, the court failed to follow the procedures that govern habeas corpus proceedings of fulfilling its function

1 in determining what material issues are truly disputed.

2 4. That by failing to compel Respondent to respond
3 to the factual allegations set forth in the petition, the court
4 failed its function of determining what material issues are
5 truly disputed.

6 5. That by Respondent failing to address the factual
7 allegations of the missing tape; the statutes and regulations
8 defining the distinction between the process of reviewing the
9 record and the means of recording the hearing/decision; to
10 analyze and address the equitable remedy fashioned by the court;
11 and to follow the court order, they failed to narrow the facts
12 and issues that are truly in dispute preventing Petitioner from
13 controverting those facts.

14 6. That by Respondent failing to address the material
15 factual allegations the return was defective in two ways; It
16 failed to fulfill its function of narrowing the facts and issues
17 to those that are truly in dispute; and prevent habeas corpus
18 Petitioner from controverting those facts.

19 7. That the goal of procedure that govern habeas corpus
20 proceedings is to provide framework in which court can discover
21 truth and do justice in timely fashion.

22 8. That because the court did not have before it the
23 facts and issues disputed, nor there controverted, it could
24 not identify the material factual issues actually in dispute.
25 Accordingly, Petitioner did not receive a full and fair
26 determination of the material factual allegations that form
27 the basis of the habeas petition.

1 9. That the court abused its discretion in denying
2 Petitioner's habeas petition in not following the rules governing
3 habeas procedure. If sworn as a witness, I would be competent
4 to testify to the facts contained herein this declaration because
5 they are within my personal knowledge.

6 I declare under penalty of perjury that the foregoing is
7 true and correct and that this declaration was executed on
8 12/4, 2007, at Soledad, California.

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11 FRED L. BAKER
12 Petitioner in Pro Per
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Petitioner in Pro Per

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT**

In re	)	No.
)	
FRED L. BAKER,	)	DECLARATION OF FRED L. BAKER
	)	INSUPPORT OF WRIT OF HABEAS
On Habeas Corpus.	)	CORPUS.

I Fred L. Baker declare:

1. That my codefendant in Case No. CR 17643 was Vernice Rose Habbitt.

2. The only time Steven Scoby-Canado was involved in the trial proceedings is when he was called as a witness for the Prosecution against Habbitt and testified to the following:

1) His relationship with other participants; 2) They had all lived in Perris; 3) that he lived in an apartment near Wood Road in Perris with his parents, his sister defendant Habbitt and another sister; 4) that at about 4 A.m. on the night in question he was arrested at the apartment of yet another sister; 5) that he arrived there in a red Vega and that the first time he saw the red Vega was on Wood Road. Thereafter

1 he refuse to answer any further questions and the court found
2 him in contempt.

3 3. That Steven Scoby-Canado was adjudicated as a juvenile
4 in the Juvenile Court system.

5 4. That at no point in the Appellate decision for case
6 no. CR 17643 or Case No. 4 Crim 12415 does it states that Steven
7 Scoby-Canado and I were tested for gunshot residue and only
8 my test came back positive for gunshot residue.

9 5. That codefendant Early Ferris admitted that defendant
10 Scoby-Canado also shot Mr. Dixon.

11 6. That ballistics test indicated that only one of the
12 two bullets recovered from Mr. Dixon was tested due to damage.
13 If sworn as a witness, I would be competent to testify to the
14 facts contained herein because they are within my personal
15 knowledge.

16 I declare under penalty of perjury that the foregoing is
17 true and correct and that this declaration was executed on
18 12/4, 2007, at Soledad, California.

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21 FRED L. BAKER
22 Petitioner in Pro Per
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Petitioner in Pro Per

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT

In re	)	Case No.
)	
FRED L. BAKER,	)	DECLARATION BY PETITIONER OF
	)	RESPONDENT'S FAILURE TO FOLLOW
	)	THE RULES GOVERNING HABEAS
	)	CORPUS PROCEDURE DENYING
	)	PETITIONER A FULL AND FAIR
	)	DETERMINATION OF THE FACTUAL
	)	ALLEGATIONS THAT FORM THE BASIS
On Habeas Corpus.	)	OF THE HABEAS PETITION

I Fred L. Baker, declare:

1. The most important factual allegation in
 Petitioner's habeas corpus petition were that Respondent lost
 the second tape that contained the critical information needed
 to complete the record for review. If sworn as a witness, I
 would be competent to testify to the facts contained herein
 because they are within my personal knowledge.

2. That Respondent has the burden of producing the
 record.

3. That Respondent has failed to satisfy its burden
 of producing the record.

4. That Respondent failed to address the factual
 allegations of the missing tape.

1 5. That Respondent failed to address the statutes and
2 regulations defining the distinction between the process of
3 reviewing the record and the means of recording the hearing/
4 decision.

5 6. That Respondent failed to analyze and address the
6 equitable remedy fashioned by the court.

7 7. That Respondent failed to follow the court order.

8 8. That because of Respondent's failure to follow the
9 rules that govern habeas procedure by not responding, Petitioner
10 did not receive a full and fair determination of the factual
11 allegations that form the basis of the habeas petition.

12 I declare under penalty of perjury that the foregoing is
13 true and correct and that this declaration was executed on
14 12/4, 2007, at Soledad, California.

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17 FRED L. BAKER
18 Petitioner in Pro Per
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Petitioner in Pro Se

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT

In re	)	Case No.
)	
FREDERICK LEE BAKER,	)	DECLARATION OF PETITIONER IN
	)	SUPPORT OF PETITION FOR WRIT
	)	OF HABEAS CORPUS
On Habeas Corpus.)	

I, Frederick L. Baker, declare:

1. That I am a resident of the State of California and the Petitioner in the above entitled matter. If sworn as a witness, I would competently testify to the facts contained herein because they are within my personal knowledge.

2. That on September 24, 2004, the Board of Parole Hearings ("Board") held my seventh parole consideration hearing at the Correctional Training Facility in Soledad. (BT at p. 1.)

3. That in applying the legal principles of Penal Code Sections 3041, 3042 and the Rules and Regulations governing parole consideration hearings for life inmates to this case, the Board panel determined that I was no longer a threat to public safety and set my base term. (Exh. A & BT at pp. 5-6.)

1 4. That the victim (Pen. Code § 3043, subd. (b)), the
2 deputy district attorney (id., § 3042, subd. (a)), and myself
3 and my attorney (id., § 3041.5, subd. (a)(2)), were given the
4 opportunity to voice our opinions. (Exh. K at p. 9, lns 1-2.)

5 5. That deputy commissioner Rolando Mejia recorded
6 (2) two tapes during the proceedings. (See BT at pp. 1, 43,
7 & 84; see also Pen. Code § 3042, subd. (b).)

8 6. That the Board panel recorded onto the second tape
9 the summary of its findings with supporting reasons from the
10 BPT-1000(b) grant worksheet generated at the hearing.

11 7. That shortly thereafter, the panel gave me a copy
12 of its findings with the affixation "PAROLE GRANTED." (Exh.
13 A.)

14 8. That on September 28, 2004, I signed the notice
15 and conditions of parole. Which included, the conditions I
16 was required to meet to be paroled, and I was also informed
17 of the consequences of failure to meet those conditions. (See
18 Exh(s) A and B.)

19 9. That subsequent of the September 2004 hearing, the
20 Board failed to produce all tapes for transcription. (BT at
21 pp. 84-85.)


22 10. That the Board either lost or misplaced the second
23 tape. (See BT at p. 85, lns 3-4; Exh. N at p.2, lns 13-14;
24 Pen. Code § 3042, subd. (b).)

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26 Decl.(4) of Fred E. Baker in Supp. of the Petition for Writ of Habeas Corpus
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1 11. That on December 14, 2004, the Board sitting en
2 banc overturned the finding of suitability (Exh. D) on the
3 conclusionary statement of the Decision Review Unit that "due
4 to an apparent malfunction of the recording equipment, that
5 the decision portion of the hearing cannot be transcribed."
6 (See Exh. C.)

7 I declare under penalty of perjury that the foregoing is
8 true and correct and that this declaration was executed on
9 12/4, 2007 at Soledad, California.

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11 _____
12 FREDERICK LEE BAKER
13 Petitioner in Pro Se
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